KERAJAAN MALAYSIA v. MOHD SAZALI SALAMAT & ANOR

HIGH COURT MALAYA, KUALA LUMPUR
LEONG WAI HONG JC
[APPEAL NO: WA-11BNCvC-6-01-2023]
12 DECEMBER 2023

Abstract – *(i) The phrase 'the amount in dispute or the value of the subject matter' as mentioned under s. 28(1) of the Courts of Judicature Act 1964 refers to an the adjudged sum of a subordinate court, and not to a sum as claimed by a plaintiff or to a combined sum of a claim and a counterclaim; and (ii) there is a requirement for a question of law to be set out in the notice of appeal or memorandum of appeal.*

CIVIL PROCEDURE: *Appeal – Competency – Appeal from Magistrates' Court to High Court – Appeal involved adjudged sum of RM500 – Whether barred by s. 28(1) of Courts of Judicature Act 1964 – Whether phrase 'the amount in dispute or the value of the subject matter' related to adjudged sum of subordinate court, amount as claimed by plaintiff or combined sum of claim and counterclaim – Whether question of law to be put forward in notice of appeal or memorandum of appeal*

WORDS AND PHRASES: *'the amount in dispute or the value of the subject matter' – Courts of Judicature Act 1964, s. 28(1) – Whether related to adjudged sum of subordinate court, amount as claimed by plaintiff or combined sum of claim and counterclaim*

The appellant was the Government of Malaysia, while the respondents were a highway concessionaire (second respondent) and its employee ('first respondent'). Pursuant to a road accident that occurred between the appellant's driver and the first respondent, the appellant initiated an action in the Magistrates' Court against the respondents to claim for special damages in the amount of RM15,000. The special damages was for the costs of repairing the appellant's vehicle due to the damage it suffered resulting from the accident. However, instead of being granted the amount as prayed for, the Magistrates' Court only awarded the appellant with a nominal sum of RM500. According to the Magistrate's Court, despite the finding that the respondents were 100% liable for the accident, the appellant had failed to adduce any evidence to show that an amount of RM15,000 had been expended in repairing the vehicle. Aggrieved, the appellant filed an appeal against the said decision. In contesting the appeal, the respondents had filed a preliminary objection that s. 28(1) of the Courts of Judicature Act 1964 ('CJA') was applicable to the present appeal, hence, it was barred by the same since: (i) the appeal was in respect of an adjudged sum of a subordinate court of only RM500; and (ii) the appellant had not put forward any question

of law in its notice of appeal ('NOA') or memorandum of appeal ('MOA'). Therefore, the issues that arose were, among others: (i) whether the phrase 'the amount in dispute or the value of the subject matter' as enumerated under s. 28(1) of the CJA referred to an adjudged sum of a subordinate court, to a sum claimed by a plaintiff or to a combined sum of a claim and a counterclaim; and (ii) whether there was a requirement for the plaintiff to put forward the question of law in its NOA or MOA.

Held (dismissing appeal with cost):

(1) The phrase 'the amount in dispute or the value of the subject matter' as expounded under s. 28(1) of the CJA refers to an adjudged sum of the subordinate court and not to a sum claimed by a plaintiff or to a combined sum of a claim and a counterclaim. To hold that it referred to a claimed sum would allow a crafty plaintiff to deliberately inflate his claimed sum to above the threshold sum to satisfy the monetary limit. The material difference between s. 68(1)(a) of the CJA and s. 28(1) of the same is that the word 'claim' as found under s. 68(1)(a) is not present in s. 28(1). Hence, since the adjudged sum of the appeal was only RM500, the plaintiff's appeal must satisfy s. 28(1) of the CJA and must be based on a question of law. (paras 35, 36, 38 & 40)

(2) A question of law could be framed in the NOA or MOA. Considering that the appellant had failed to frame any question of law in any of the said documents which asserted that the Magistrate's Court erred in law and facts, the appeal had not posed any questions of law for determination and was therefore, incompetent. The appeal was hence dismissed with costs of RM3,000. (paras 48-51)

Case(s) referred to:

Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh [1996] 2 CLJ 955 CA ***(refd)***

Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v. Tam Cheng Meng [2018] 8 CLJ 361 HC ***(refd)***

Cheah Cheng Huat v. AIG Malaysia Insurance Bhd [2023] 9 CLJ 898 HC ***(refd)***

Datuk Aziz Ishak & Anor v. YB Hj Khalid Abdul Samad [2012] CLJU 1341; [2012] 1 LNS 1341 CA ***(refd)***

Foong Yok Kok v. Prudential Assurance Malaysia Bhd [2020] CLJU 85; [2020] 1 LNS 85 CA ***(refd)***

Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh [2011] 3 CLJ 593 FC ***(refd)***

Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt [2007] CLJU 81; [2007] 1 LNS 81 CA ***(refd)***

Kannaya Rajcheman & Anor v. Teh Swee Eng [1994] 3 CLJ 54 HC ***(refd)***

KC Chan Brothers Development Sdn Bhd v. Tan Kon Seng & Ors [2001] 4 CLJ 659 HC ***(refd)***

Kolej Universiti Tunku Abdul Rahman v. Dr Muhammad Omar [2023] 1 CLJ 437 HC ***(refd)***

Lein Tiam Hock v. Arumugam Kandasamy [1999] 2 CLJ 853 HC ***(refd)***

Neoh Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor [2004] 3 CLJ 321 CA ***(refd)***

NR Azman Ghadzali v. PP [2013] 1 CLJ 938 CA ***(refd)***
Teresa Monohary Thairiyam & Anor v. Tan Ah Lek [1996] 1 CLJ 149 CA ***(refd)***
Tetuan Manjit & Co lwn. Khor Ooi Tit [2023] 5 CLJ 492 HC ***(refd)***
Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor [1997] 2 CLJ 68 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 28(1), 50(2), 68(1)(a)

For the appellant - Muhammad Asraf Shahabuddin; FC
For the respondents - Lim Hui Min & Haridas Menon; M/s C Sukumaran & Co

[Editor's note: Appeal from Magistrate's Court; Civil Suit No: WA-A71KJ-11-05-2021.]

Reported by Syamim Ariffin

JUDGMENT

Leong Wai Hong JC:

Introduction

[1] I have, on 12 June 2023, dismissed the appeal before me. The appellant/plaintiff has now obtained leave to appeal to the Court of Appeal on 1 November 2023 and filed the appeal on 28 November 2023.

[2] The sole but important issue argued before me was whether the phrase "where the amount in dispute or the value of the subject-matter" in s. 28(1) of the Courts of Judicature Act 1964 ("CJA") refers to the judgment sum of the subordinate court or the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim. These are my grounds of decision.

[3] To date, according to counsel there are no written decisions by the Court of Appeal on the meaning of the phrase "where the amount in dispute or the value of the subject-matter" in s. 28(1) of the CJA.

[4] The appeal (encl. 1) is against the decision of a Magistrate dated 13 January 2023 after a full trial. The learned Magistrate has allowed a nominal sum of RM500. The alleged costs of repairs of RM15,000 to a motorbike was not accepted by the Magistrate on the ground it was only an estimate and the actual repair costs were not proven. (See encl. 6 grounds of decision pp. 14 to 23 at paras. 20 to 21).

[5] At the appeal before me, the respondents raised a preliminary objection (*via* encl. 25) that no question of law was posed in the notice of appeal or in the memo of appeal as required under s. 28(1) of the CJA which states:

> ... no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or **matter where the amount in dispute or the value of the subject – matter is ten thousand ringgit or less except on a question of law**.
>
> (emphasis added)

[6] I have agreed with the respondents and have dismissed the appeal on 12 June 2023 with costs of RM3,000.

[7] Parties shall be referred to as they were cited at the Magistrate's Court.

Background Facts

[8] The plaintiff's driver was driving the plaintiff's vehicle on 3 June 2015 at around 11.30am when it collided with the defendants' vehicle at Jalan Yap Kwan Seng. The plaintiff's car sustained damage as a result of the accident.

[9] The plaintiff filed a suit at the Magistrate's Court against the defendants for damages together with interest and costs.

[10] After a full trial, the learned Magistrate decided that the defendants were 100 percent liable for the accident. However, the learned Magistrate disallowed the plaintiff's claim for special damages of RM15,000 which was the alleged cost of repairing the plaintiff's vehicle. The Magistrate's Court only allowed a nominal award of RM500 on the ground that there was no evidence that payment of RM15,000 has been made to repair the said vehicle.

[11] Dissatisfied with the decision, the plaintiff has filed an appeal to me on the issue of quantum only.

[12] As stated earlier, the defendants raised a preliminary objection to the plaintiff's appeal *via* a notice of preliminary objection dated 7 June 2023 (encl. 24) on the ground that s. 28(1) of the CJA is applicable and the plaintiff must show they have a question of law before the plaintiff can proceed with this appeal.

The Appeal Before Me

[13] There are three issues. They are:

(i) is the appeal subject to s. 28(1) of the CJA?

(ii) if yes, has the plaintiff put forward a question of law? What is a question of law?

(iii) must the question of law be set out in the notice of appeal or in the memorandum of appeal?

First Issue – Is The Appeal Subject To Section 28(1) Of The CJA?

[14] The issue before me is whether the phrase "where the amount in dispute or the value of the subject – matter" in s. 28(1) of the CJA refers to the judgment sum of the subordinate court or the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim?

[15] The courts have construed s. 28(1) of the CJA by comparing it with cases that construed a similar provision in s. 68(1)(a) of the CJA which deals with the requirement of obtaining leave to appeal from the High Court to the Court of Appeal.

[16] Section 28(1) of the CJA reads as follows:

> 28 Civil appeals from subordinate courts
>
> (1) Subject to any other written law, no appeal shall lie to the High Court from **a decision** of a subordinate court in any civil cause or matter **where the amount in dispute or the value of the subject – matter** is ten thousand ringgit or less except on a question of law.
>
> (emphasis added)

[17] Section 68(1)(a) of the CJA provides as follows:

> 68. Non-appealable matters.
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) When **the amount or value of the subject-matter of the claim** (exclusive of interest) is less than two hundred and fifty thousand ringgits, except with the leave of the Court of Appeal;
>
> (emphasis added)

[18] A comparison of s. 28(1) with s. 68(1)(a) of the CJA shows these differences in their wordings:

(i) section 28(1) of the CJA uses the words 'a decision of a subordinate court ... the amount in dispute or the value of the subject matter' whereas s. 68(1)(a) of the CJA uses the words 'the amount or value of the subject matter of the claim'; and

(ii) the word 'claim' in s. 68(1)(a) of the CJA is not present in s. 28(1) of the CJA. Instead, the word 'decision' is present.

Section 28 Of The CJA

[19] Cases that held the amount in dispute or the value of the subject-matter" in s. 28 of the CJA must relate to the decision of a subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim include:

(i) *Lein Tiam Hock v. Arumugam Kandasamy* [1999] 2 CLJ 853 Suriyadi Halim Omar J;

(ii) *KC Chan Brothers Development Sdn Bhd v. Tan Kon Seng & Ors* [2001] 4 CLJ 659; [2001] 6 MLJ 636; [2001] 4 AMR 4533; [2001] 2 MLRH 267 Ramly Ali JC;

(iii) *Tetuan Manjit & Co lwn. Khor Ooi Tit* [2023] 5 CLJ 492; [2023] 11 MLJ 1 Azizan Md Arshad JC; and

(iv) *Cheah Cheng Huat v. AIG Malaysia Insurance Bhd* [2023] 9 CLJ 898; [2023] MLJU 1535 at [60] Kenneth St James JC.

[20] A contrary view was taken in *Badan Pengurusan Bersama Kompleks Pandan Safari Lagoon v. Tam Cheng Meng* [2018] 8 CLJ 361; [2018] 8 MLJ 574; [2018] 3 AMR 597; [2018] MLRHU 394.

[21] In *Neoh Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321, the appeal to the High Court concerned an adjudged sum of RM1,716.96. The Court of Appeal in its grounds of decision dealt with the issue whether a question of law must be framed in a notice of appeal or it can be posed in a memorandum of appeal.

[22] The court did not address expressly the issue whether the phrase "the amount in dispute or the value of the subject-matter" in s. 28(1) of the CJA refers to the adjudged sum of the subordinate court or the sum claimed by a plaintiff. However, it can be argued, based on a reading of the judgment of Justice Gopal Sri Ram, that parties and the court were at *ad idem* that s. 28(1) of the CJA refers to the adjudged sum of the subordinate court and thus did not consider it as an issue.

Section 68(1)(a) Of The CJA

[23] Cases that held the words "the amount or value of the subject-matter of the claim" in s. 68(1)(a) of the CJA refer to the sum claimed by a plaintiff are *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68; *Teresa Monohary Thairiyam & Anor v. Tan Ah Lek* [1996] 1 CLJ 149; *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh* [2011] 3 CLJ 593; [2011] MLJU 78.

[24] A contrary view was taken in *Datuk Aziz Ishak & Anor v. YB Hj Khalid Abdul Samad* [2012] CLJU 1341; [2012] 1 LNS 1341 CA; *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 CLJ 955; [1996] 2 MLJ 329; *Foong Yok Kok v. Prudential Assurance Malaysia Bhd* [2020] CLJU 85; [2020] 1 LNS 85.

Analysis Of The Reasoning In The Cases Cited Above

[25] In *Lein Tiam Hock v. Arumugam Kandasamy* [1999] 2 CLJ 853, Suriyadi Halim Omar J said at held [1]:

> The amount in dispute or the value of the subject-matter" in s. 28 of the CJA **must relate to the decision of a subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim**. Hence, the amount in dispute or the value of the subject-matter in the instant appeal was the judgment sum of RM9,150. The defendant's instant appeal was, therefore, incompetent.
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> (emphasis added)

[26] Suriyadi Halim Omar J arrived at his decision after reviewing the Federal Court's decision in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68 and the Court of Appeal's decision in *Teresa Monohary Thairiyam & Anor v. Tan Ah Lek* [1996] 1 CLJ 149 on s. 68(1)(a) of the CJA.

[27] Suriyadi Halim Omar J in arriving at his preferred interpretation of s. 28(1) of the CJA was of the view that it is significant the word 'decision' is absent in s. 68(1)(a). Instead, it contains the word "claim". This is what His Lordship said:

> Section 68 of the Courts of Judicature Act 1964, … reads:
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal ...
>
> The Federal Court when discussing the above section in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68, encountered no difficulty in concluding that the appeal at hand would still be allowed even if the judgment sum were less than RM100,000 (the sum at the material time prior to the amendment). But this was dependant on a particular reason. Chong Siew Fai CJ (Sabah & Sarawak) at p. 72 supplied the reason. His Lordship said:
>
> > In my view no leave of court was required for this particular appeal. Section 68(1)(a) of the Act used the phrase "amount or value of the subject-matter *of the claim". The phrase must be read as a whole*. In the instant case under appeal, the subject-matter is the road traffic accident and the claim of the 1st plaintiff/appellant is for an amount far in excess of RM100,000. That being so, the amount adjudged at the trial assumes little or no significance.
> >
> > Another case which is relevant for consideration is the case of *Manohary Teresa & Anor v. Tan Ah Lek* [1996] 1 CLJ 149. In this case the defendant appellant, erroneously thought that leave was required in the circumstances of the case, as the judgment sum was below RM250,000 (after amendment by Act A837). He thenceforth filed a motion for that purpose, and due to that time-consuming act, time for his appeal expired. He thereafter applied for an extension of time. Again, the Court of Appeal held that leave to appeal was not required in spite of the award being below RM250,000. And again, the decision was based on the sum claimed rather than on the judgment sum. Since we are on the subject of "decision", it is worthwhile to note at the earliest of stages that that word is absent in s. 68(1)(a). Instead, it contains the word "claim". ...

A

> I am satisfied that the immediate five cases discussed above are inapplicable to the scenario as envisaged by s. 28, as they are easily distinguishable. This provision is plain and clear. To use the words of Mohamed Azmi SCJ in the case of *Tan Weng Chiang v. Public Prosecutor* [1992] 2 MLJ 625, at 630:
>
> B
>
> > Where the meaning of words in the statute is plain and unambiguous, judges should not invent fancy ambiguities.
>
> *Pursuing the tenets of interpretation, I am satisfied that the amount in dispute, or the subject-matter provided for under s. 28, must relate to the decision of the subordinate court, and not to any sum claimed either by the plaintiff or the combined sum of the claim and counter-claim submitted by the defendant, if any. Apart from attaching weight or significance to that term "decision", the provision of s. 28 must also be read as a whole. Indisputably, it is also beyond denial that the latter provision does not have the terms of "claim" or "suit"*, as promulgated in the material provisions discussed in the above cases. If Parliament had wanted to treat ss. 28 and 68(1)(a) of the Courts of Judicature Act 1964 in similar fashion, it certainly would not have hesitated to do so.
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> C
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> D
>
> (emphasis added)

[28] In *Datuk Aziz Ishak & Anor v. YB Hj Khalid Abdul Samad* [2012] CLJU 1341; [2012] 1 LNS 1341, the Court of Appeal was not dealing with s. 28(1) of the CJA but construing s. 68(1) of the CJA.

E

[29] Mohd Hishamudin Yunus JCA commenting on the phrase 'the amount or value of the subject-matter of the claim in s. 68(1) CJA said, in order to determine the 'amount or value of the subject-matter of the claim', the court must look at the adjudged sum and not the amount claimed in the statement of claim.

F

[30] The Court of Appeal distinguished the Federal Court decisions in *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68; [1997] 1 MLJ 136 and *Harcharan Singh Sohan Singh v. Ranjit Kaur S Gean Singh* [2011] 3 CLJ 593; [2011] MLJU 78.

G

[31] Mohd Hishamudin Yunus JCA said "We note with dismay that the well-reasoned judgment of the Court of Appeal in *Amer Mohideen* was not considered by the Supreme Court in *Yai Yen Hon*. It is highly probable that *Amer Mohideen* was somehow inadvertently not brought to the attention of the Supreme Court."

H

[32] The fuller extract of Mohd Hishamudin Yunus JCA's reasoning can be seen below:

> *... The respondent/plaintiff contended that since the adjudged sum was below RM250,000, therefore leave was required* pursuant to section 68(1)(a) of the Courts of Judicature Act 1964.

I

Section 68(1)(a) of the Courts of Judicature Act 1964 provides: A

68. Non-appealable matters.

(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) When the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal; B

The learned counsel for the appellants/defendants … argued that the Court, in order to determine the 'amount or value of the subject-matter of the claim' for the purpose of section 68(1)(a) of the Courts of Judicature Act, *must look at the amount claimed in the statement of claim, and not at the adjudged* sum. The learned counsel relied on *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 1 MLJ 136 and *Harcharan Singh s/o Sohan Singh v. Ranjit Kaur d/o S Gean Singh (sued as the administratrix of the estate of Bhagwan Singh s/o Sohan Singh, deceased) (unreported)* [2011] MLJU 78. C

With respect, we take a different view. D

In our judgment, in the context of the present case, considering that it is the defendants who are appealing, and not the plaintiff, the 'amount or value of the subject-matter of the claim' for the purpose of section 68(1)(a) of the Courts of Judicature Act 1964, ought to be the adjudged sum of RM60,000, and not the pleaded sum. We find support for the position that we take in the judgment of the Court of Appeal in *Amer Mohideen Dawood v. Sneh Bhar s/o Ter Binder Singh* [1996] 2 MLJ 329. In this case, NH Chan JCA (sitting with KC Vohrah and Mohd Noor Ahmad JJ (as both of them then were)), in delivering the judgment of the Court of Appeal, in clear language ruled (at pp. 331-332): E

> Counsel for the respondent in this appeal applies by notice of motion for the appeal to be dismissed on the ground that the appellant's appeal to the Court of Appeal is incompetent as the value of the subject-matter of the claim under appeal was less than RM250,00 and no leave to appeal to the Court of Appeal was obtained. F G

Section 68(1)(a) of the Courts of Judicature Act 1964 is as follows:

68(1) No appeal shall be brought to the Court of Appeal in any of the following cases:

(a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal; H

'The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to be payable, and if it is not a money claim, it is 'the value of the subject-matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan* I

v. Pratt [1888] 13 AC 780. The Earl of Selborne, giving the judgment of the Privy Council (consisting of the Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781-782:

> *Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships*, even if they were not bound by it, *would agree in principle with the rule* laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v. Leclaire* 15 Moore PCC 181, that is, *that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal*. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something or to do something as defendant. It may be that the value to the defendant of an adverse judgment is greater than the value laid by the plaintiff in his claim. If so, which was the case in *Macfarlane v. Leclaire*, it would be very unjust that he should be bound, not by the value to himself but by the value originally assigned to the subject-matter of the action by his opponent. The present is the converse case. A man makes a claim for much larger damages than he is likely to recover. The injury to the defendant, if he is wrongly adjudged to pay damages, is measured by the amount of damages which he is adjudged to pay. That is not in the least enhanced to him by the fact that some greater sum had been claimed on the other side.
>
> ….

The appellant (who was the defendant in the High Court) as 'the person against whom the judgment is passed … has been adjudged … to do something as defendant', namely, he was ordered specifically to perform the sale and purchase agreement dated 14 September 1989. An appeal against that judgment will be prohibited if the value of the subject-matter of the judgment for specific performance is below the value of RM250,000 (if leave to appeal to the Court of Appeal has not been obtained).

If 'the amount of the claim' or 'the value of the subject-matter of the claim' is to be based on the claim as pleaded in the statement of claim and not in the judgment, then the purpose of s. 68(1)(a) of the Act could be circumvented quite easily by claimants merely stating in their pleadings, in every case, that they are claiming for more than RM250,000. This easy way to get round the need to obtain leave makes the entire provision of s. 68(1)(a) of the Act superfluous. This is how it was put by Mahadev Shankar JCA in *Monohary Teresa v. Tan Ah Lek* [1995] 3 MLJ 365, at p 368:

> *Such an approach … could side-track the purpose of s. 68(1)(a) because claimants could get round the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.*

In *Yai Yen Hon* it was an accident case involving the plaintiff's car and the defendants' lorry; and the sum claimed by the plaintiff against the defendants before the High Court was over RM4 million as special and general damages. But the High Court awarded the plaintiff only a sum of RM62,400 for special and general damages. Dissatisfied with the sum awarded, the plaintiff appealed to the Supreme Court ... *The Supreme Court held that leave was not required since for the purpose of section 68(1)(a) of the Courts of Judicature Act the amount or value of the subject matter of the claim was the sum claimed in the statement of claim (over RM4 million) and not the sum awarded by the High Court (RM62,400).*

We are mindful of the fact that *Yai Yen Hon* is a decision of the Supreme Court. However, that case can be distinguished in that in that case it was the plaintiff who was appealing, whereas in the instant case, just as in the case of *Amer Mohideen*, it was the defendant who is appealing. We take the position that where it is the defendant who is appealing (as opposed to the plaintiff being the appellant), then, the *Amer Mohideen* principle must prevail and that the adjudged sum must be the determining factor and not the sum claimed in the statement of claim; and if the adjudged sum is less than RM250,000, the defendant must obtain leave in order to appeal. We note with dismay that the well reasoned judgment of the Court of Appeal in *Amer Mohideen* was not considered by the Supreme Court in *Yai Yen Hon*. It is highly probable that *Amer Mohideen* was somehow inadvertently not brought to the attention of the Supreme Court. Be that as it may, the Supreme Court in *Yai Yen Hon*, nevertheless, did say:

> There might well be cases where the sums adjudged may be validly taken into account; the instant appeal before us, however, is not one such case.

In *Harcharan Singh* the issue before the Federal Court was whether section 68(1)(a) of the Courts of Judicature Act applies where the subject-matter of the claim was for a declaration coupled with a claim for ancillary reliefs. Thus, *Harcharan Singh* is not so much of a case dealing with the issue of whether, for the purpose of interpreting section 68(1)(a) of the Courts of Judicature Act, it should be the adjudged sum or whether it should be the sum claimed in the statement of claim. Moreover, in *Harcharan Singh*, like in *Yai Yen Hon*, it was the plaintiff who was appealing to the Court of Appeal (and, subsequently, to the Federal Court) and not the defendant. And, like *Yai Yen Hon*, the Federal Court, in its brief judgment, did not consider *Amer Mohideen*.

…

In the present application, *we, therefore, rule that since the adjudged sum was only RM60,000, leave of the Court of Appeal under section 68(1)(a) of the Courts of Judicature Act is required*; and since no prior leave has been obtained, the instant appeal is incompetent.

(emphasis added)

[33] In *Foong Yok Kok v. Prudential Assurance Malaysia Bhd* [2020] CLJU 85; [2020] 1 LNS 85, the Court of Appeal followed *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 CLJ 955; [1996] 2 MLJ 329 and

ruled that the 'amount' or 'value' must be 'the total amount of the claim in the action which has been adjudged to be payable' or the value of the subject matter of the claim 'in the action which has been adjudged as recoverable because the appeal is against the judgment (and not against the claim made by the claimants in the pleadings)'.

[34] Kamarudin Hashim JCA said:

> [37] In *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329 this Court on similar issue decided that: "The amount of the claim' has to mean the total amount or sum of the claim in the action which has been adjudged to the payable, and if it is not a money claim, it is 'the value of the subject-matter of the claim' in the action which has been adjudged as recoverable, because it is only against the judgment (and not against the claim made by claimants in their pleadings) that the appeal could be brought. See *Allan v. Pratt* [1888] 13 AC 780. The Earl of Selborne, Lord Watson, Lord Hobhouse and Sir Barnes Peacock), said this, at pp 781-782:
>
> > Their Lordships are of opinion that the appeal is incompetent. The proper measure of value for determining the question of the right of appeal is, in their judgment, the amount which has been recovered by the plaintiff in the action and against which the appeal could be brought. Their Lordships, even if they were not bound by it, would agree in principle with the rule laid down in the judgment of this tribunal delivered by Lord Chelmsford in the case of *Macfarlane v. Leclaire* 15 Moore PCC 181, that is, that the judgment is to be looked at as it affects the interests of the party who is prejudiced by it, and who seeks to relieve himself from it by appeal. If there is to be a limit of value at all, that seems evidently the right principle on which to measure it. The person against whom the judgment is passed has either lost what he demanded as plaintiff or has been adjudged to pay something …

My Analysis

[35] In my view "the amount in dispute or the value of the subject-matter" in s. 28(1) of the CJA refers to the adjudged sum of the subordinate court and not to the sum claimed by a plaintiff or the combined sum of a claim and a counterclaim. I respectfully adopt the reasoning of the courts above.

[36] In particular, to hold that it refers to the claimed sum will allow a crafty plaintiff to deliberately inflate his claimed sum to above the threshold sum in order to satisfy the monetary limit.

[37] In this respect, I agree with the decision of the Penang High Court in *Tetuan Manjit & Co lwn. Khor Ooi Tit* [2023] 5 CLJ 492; [2023] 11 MLJ 1 where Azizan Arshad PK said in Bahasa Malaysia:

> [42] Akhirnya mahkamah ini juga berpendapat tafsiran bahawa RM10,000 tersebut berdasarkan kepada jumlah penghakiman adalah selaras dengan niat Parlimen ketika ianya diluluskan dan niat s. 28 Akta 1964 adalah

berlainan daripada s 68 Akta 1964 berdasarkan perkataan-perkataan yang terdapat di dalamnya. Apa yang sama adalah tujuan ianya digubal iaitu sebagai tapisan awal untuk rayuan. Ini adalah selaras dengan keputusan kes *Amer Mohideen Dawood v Sneh Bhar w/o Ter Binder Singh* [1996] 2 MLJ 329, yang memutuskan bahawa:

> This is how it was put by Mahadev Shankar JCA in *Monohary Teresa v. Tan Ah Lek* [1995] 3 MLJ 365 at p 368:
>
> > *Such an approach … could side-track the purpose of s 68(1)(a) because claimants could get around the need to obtain leave merely by stipulating in their pleadings that they are claiming for more than RM250,000 in every case.*
>
> In my respectful view, cases – like *Yai Yen Hon v. Teng Ah Kok & Sim Huat Sdn Bhd & Anor* [1997] 2 CLJ 68 FC, *Manohary Teresa & Anor v. Tan Ah Lek* [1996] 1 CLJ 149 CA and *Harcharan Singh s/o Sohan Singh v. Ranjit Kaur d/o S Gean Singh (sued as the administratrix of the estate of Bhagwan Singh s/o Sohan Singh, deceased)* [2011] MLJU 78 FC, which hold that the threshold in s. 68(1)(a) of the CJA refers to the sum claimed by a plaintiff and not the adjudged sum of the court below should not be followed to interpret section 28(1) CJA as the wordings of both sections are materially different.
>
> (emphasis added)

[38] The material difference is that the word 'claim' in s. 68(1)(a) of the CJA is not present in s. 28(1) of the CJA. The absence is significant as pointed out above in my analysis of *Lein Tiam Hock*.

[39] Further, as set above, a contrary view on s. 68(1)(a) of the CJA was taken in *Datuk Aziz Ishak & Anor v. YB Hj Khalid Abdul Samad* [2012] CLJU 1341; [2012] 1 LNS 1341, *Amer Mohideen Dawood v. Sneh Bhar w/o Ter Binder Singh* [1996] 2 CLJ 955; [1996] 2 MLJ 329 and *Foong Yok Kok v. Prudential Assurance Malaysia Bhd* [2020] CLJU 85; [2020] 1 LNS 85 CA.

[40] As the adjudged sum of this appeal was RM500, the plaintiff's appeal must satisfy s. 28(1) of the CJA and must be based on a question of law.

Second Issue - Has The Plaintiff Put Forward A Question Of Law? What Is A Question Of Law?

[41] Section 50(2) of the CJA contains the phrase "question of law".

[42] Section 50 of the CJA relates to the statutory jurisdiction conferred on the Court of Appeal in the hearing and determination of criminal appeals from the lower courts. Section 50(2) states "An appeal shall lie to the Court of Appeal, with the leave of the Court of Appeal, against any decision of the High Court in the exercise of its appellate or revisionary jurisdiction in

respect of any criminal matter decided by a Magistrates' Court but such appeal shall be confined to only **question of law** which have arisen in the course of the appeal or revision and the determination of which by the High Court has affected the event of the appeal or revision." (emphasis added)

[43] On the meaning of the phrase "question of law" in s. 50(2) of the CJA, the Court of Appeal in *NR Azman Ghadzali v. PP* [2013] 1 CLJ 938 said:

> [17] "The crucial element of "question of law" must in our view relate to questions involving the interpretation of relevant and applicable legal principles. It is totally different from questions of fact which require references to facts and evidence and the inferences drawn from facts. *In essence questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts.*
>
> [18] The rationale is best reflected by the passage by Lord Radcliffe in *Edwards (Inspector of Taxes) v. Bairstow And Anor* [1956] AC 4 which is reproduced hereunder: As I see it, the reason why the courts do not interfere with commissioners' findings or determinations when they really do involve nothing but the question of fact is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interests of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is more than to examine those facts with decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found inconsistent with the determination come to, to say so without more ado.
>
> …
>
> [27] Hence in the scenario aforesaid can it be said that question of law have evolved within the scope of s. 50 of the CJA? The scenario to my mind relates to issues involving determination of facts by the learned Magistrate based on the evidence presented before him as a consequence of his guilty plea. No question of law evolved for determination based on the factual findings of the Magistrate.
>
> [29] To conclude we **are of the considered view that the application herein does not involve the determination of any question of law – it revolves round question of facts** and as such is outside the ambit and scope of s. 50 of the CJA.
>
> [30] The application is accordingly dismissed.
>
> (emphasis added)

[44] In *Kannaya Rajcheman & Anor v. Teh Swee Eng* [1994] 3 CLJ 54; [1993] 4 MLRH 707, T Selventhiranathan JC also said at p. 57 (CLJ); p. 710 (MLJ): A

> Having done so, I am satisfied that *all the grounds of appeal in the memorandum at best relate to the application of the law to the facts and do not involve any question of law alone for decision. Labelling the grounds of appeal as involving questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance is what matters, not the label.* B
>
> (emphasis added)

[45] In *Indah Water Konsortium Sdn Bhd v. Yong Kon Fatt* [2007] CLJU 81; [2007] 1 LNS 81; [2007] 1 MLRA 675, the plaintiff has sued for a sum of RM1,074 at the Magistrates' Court. On the meaning of the phrase "question of law" in s. 28(1) of the CJA, Zaleha Zahari JCA said: C

> [33] *To sum up, labelling all of these questions as "questions of law" does not metamorphose what is essentially issues of procedure into "questions of law" of the cited Act and Regulations within the meaning of s. 28(1) of the Act*. In this situation I hold that the learned judge had erred in entertaining the appeal as the questions in the respondent notice of appeal were not "questions of law" within the ambit of s. 28(1) of the Act. D
>
> (emphasis added)

[46] To summarise, what is 'a question of law' can be distilled from the decided cases as follows: E

(i) questions of law are questions involving legal principles of wide applicability in diverse situations and not confined to any particular facts;

(ii) examples of questions of law are – does the presumption of advancement apply in Malaysia? Can a political party sue for defamation in Malaysia? F

(iii) questions which involve application to facts and evidence and the inferences drawn from facts are not questions of law; and

(iv) labelling the grounds of appeal as questions of law does not metamorphose what are essentially questions of fact into questions of law. The substance is what matters, not the label. G

Third Issue Is – Must The Question Of Law Be Set Out In The Notice Of Appeal Or In The Memorandum Of Appeal? H

[47] In *Neoh Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor* [2004] 3 CLJ 321, the appeal to the High Court concerned an adjudged sum of RM1,716.96. The Court of Appeal held:

> ... that there is no such requirement for the appellant to expressly state the question of law in the notice of appeal. The Court of Appeal through the judgment of His Lordship Justice Gopal Sri Ram has this to say: I

A [2] Section 28(1) of the CJA does not say that the notice of appeal should expressly state the question of law. Neither does O. 49 of the SCR or O. 55 of the Rules of the High Court 1980 ('RHC'). There was thus nothing wrong with the notice of appeal lodged by the appellant with the High Court. In the circumstances, we would disagree with the learned judge that a notice of appeal in Form 140 of the SCR should set out the B questions of law which the appeal involves. Points of law will normally be taken in the memorandum of appeal and it is to that document that the High Court ought to have resort.

[3] *Malayan Banking Bhd v. Syed Ali Mohsin and Mohamad Safuan Wasidin & Anor v. Mohd Ridhuan Ahmad*, which in essence held that "... Form 140 C must state at least in general form the questions of law that he wishes to appeal on were wrongly decided and should no longer be considered as good law."

[48] Thus, the law is now settled that the question of law can be framed in the notice of appeal or stated in the memorandum of appeal. See: *Neoh* D *Choo Ee & Co Sdn Bhd v. Vasalamany Govindasamy & Anor CA* [2004] 3 CLJ 321 and also *Kolej Universiti Tunku Abdul Rahman v. Dr Muhammad Omar* [2023] 1 CLJ 437; [2023] 1 MLRH 508 and [2023] 7 MLJ 830 at (51 to 53).

Application To Facts

E

[49] The plaintiff has failed to frame any question of law in the notice of appeal (encl. 24) or in the memorandum of appeal (encl. 3) which asserted the Magistrate erred in law and facts.

[50] I am therefore of the view this appeal does not pose any questions of F law for determination. This appeal is incompetent.

Decision

[51] For the reasons aforesaid, I dismissed this appeal with costs of RM3,000.

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